

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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LOUIS VUITTON MALLETIER,

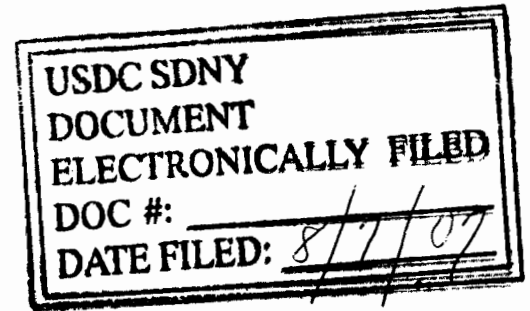
Plaintiff,

- against -

DOONEY & BOURKE, INC.,

Defendant.
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SHIRA A. SCHEINDLIN, U.S.D.J.



ORDER

04 Civ. 2990 (SAS)

Upon consideration of letters submitted by the parties, dated June 25, 28, 29, July 31, and August 1, 2, and review of transcripts from court conferences held on February 12, June 26, and July 3, 2007 (telephonic), it is hereby ORDERED:

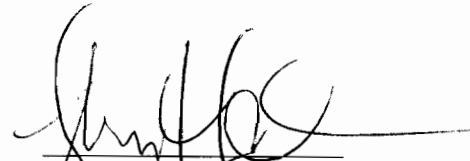
The first affirmative defense pled by Dooney & Burke, Inc. ("Dooney") is stricken. While valid registration of the Dooney mark is not a complete defense, the Court will appropriately charge the jury that it may consider the facts supporting this defense when determining whether Dooney has infringed on Louis Vuitton Malletier's mark.

The second affirmative defense pled by Dooney is also stricken. Because the trademark in dispute is the "traditional Toile mark combined with the 33 Murakami colors"¹ (rather than the "look" of the bag), the doctrine of aesthetic functionality does not apply.

¹ *Louis Vuitton Malletier v. Dooney & Burke, Inc.*, 454 F.3d 108, 116 (2d Cir. 2006).

The third, fourth, fifth and sixth affirmative defenses pled by Dooney remain. However, all of these are equitable defenses and will be addressed to the Court at the appropriate time. They will not be submitted to the jury. To the extent some of the facts supporting these defenses are also relevant to issues that the jury will decide, such facts will be received into evidence if they are relevant and admissible.

SO ORDERED:


Shira A. Scheindlin
U.S.D.J.

Dated: New York, New York
August 7, 2007

- Appearances -

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